Remarks

Correction of the Oath/Declaration

The examiner has objected to the Oath/Declaration as being defected because the citizenship of Christopher Deboer is a zip code instead of a country. Applicants respectively submit with this paper a newly-executed Oath/Declaration that contains corrected information with regard to Christopher Deboer's citizenship.

Claim Rejections under 35 USC § 112, paragraph 1 (Written Description)

The examiner has rejected claims 1-11, 15, 27, 37, and 42-50 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The gist of the claim rejections stems from the examiner's view that the "commercial group of non-spark generating materials" has no basis of support in the specification.

Applicants have amended the specification to incorporate the requisite written description to support claims 1-11, 15, 27, 37, and 42-50. Applicants respectfully maintain that inclusion of the amendment in the specification is appropriate because it derives from claim 1 which was part of the specification as originally filed. Applicants have amended these claims to omit the term "commercial." By use of the phrase "a group of non-spark generating materials," Applicants mean the group of available materials that do not generate a spark when used in the context of the present invention. This attribute is an important limitation since some components of the wash liquor may be flammable. Applicants further maintain that one of ordinary skill in the art would recognize the group of those materials that qualify as such.

Applicants respectfully request that rejection of claims 1-11, 15, 27, 37, and 42-50 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement be withdrawn in view of the amendment and the aforementioned remarks.

Claim Rejections under 35 USC § 112, paragraph 2 (Indefiniteness)

The examiner has asserted several rejections of the claims under 35 U.S.C. § 112, paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants address each ground of rejection below.

(a) "substantially all materials"

The examiner has rejected claims 3, 15, 16, 27, 37, 38, 44, and 45 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "substantially all materials." Applicants have amended the claims to obviate these rejections by replacing the phrase with "the materials that comprise the automatic consumer-operated laundering apparatus or "the materials of the chamber" where appropriate. Applicants respectfully request that these claim rejections be withdrawn in view of the amendment.

(b) "fabric"

The examiner has rejected claims 1-22 and 24-50 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "fabric."

Applicants respectfully traverse these claim rejections. Applicants assert that the term "fabric" would be clearly understood by one of ordinary skill in the art of home laundering to include clothing and any other fiber- or textile-based material capable of being cleaned. The specification provides more than adequate support for this interpretation as reflected in, for example, paragraphs [0001]-[0009]. Applicants argue that the term "fabric," as used in the claims is sufficiently definite to satisfy the requirements under 35 U.S.C. § 112, second paragraph. Applicants respectfully request that these claim rejections be withdrawn in view of these remarks.

(c) "appropriate times"

The examiner has rejected claims 6, 7, and 17 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "appropriate times." Applicants have amended these claims to omit this language because it will be understood to one of ordinary skill in the art that the wash adjuvant would be added to the chamber when needed or desired. Applicants respectfully request that these claim rejections be withdrawn in view of the amendments and these remarks.

(d) "appropriate adjustment"

The examiner has rejected claims 9, 19, 40, and 48 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "appropriate adjustment." Applicants have amended these claims to omit this language because it will be understood to one of ordinary skill in the art that the level of the working fluid is detected for the purposes of determining whether the amount of working fluid in contact with the fabric is suited for the cleaning step or procedure at issue. Applicants respectfully request that these claim rejections be withdrawn in view of the amendments and these remarks.

(e) "adjusting steps in the cleaning method in response to the initial moisture content"

The examiner has rejected claims 24-34 and 42-50 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "adjusting steps in the cleaning method in response to the initial moisture content." Applicants have amended these claims to omit this language. Applicants respectfully request that these claim rejections be withdrawn in view of the amendments and these remarks.

(f) "subsequent adjustment of steps"

The examiner has rejected claims 10 and 20 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "subsequent adjustment of steps." Applicants have amended these claims to omit this language. Applicants respectfully request that these claim rejections be withdrawn in view of the amendments and these remarks.

(g) "means are taken"

The examiner has rejected claims 11, 21, 34, 45, and 20 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to the meaning of the claim language "means are taken." Applicants have amended these claims to replace this language with "adjusted." Thus, the claim limitations are drawn to sensing the temperature inside the chamber and adjusting the temperature inside the chamber to ensure that the temperature does not exceed a particular set of conditions for the working fluid. Applicants respectfully request that these claim rejections be withdrawn in view of the amendments and these remarks.

(h) "a hydrophilic-lipophilic balance from approximately 3 to 14"

The examiner has rejected claims 23, 41, 46, and 50 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner is unclear as to what specific compounds comprise the surfactants with "a hydrophilic-lipophilic balance from approximately 3 to 14." The examiner has noted in the Office Action that the Board of Patent Appeals & Interferences have found claims that include recital of chemical compound limitations based upon properties alone are invalid as being indefinite. Ex parte Spacht, 165 USPQ 409 (BdPatApp&Int 1970); Ex parte Slob, 157 USPQ 172 (BdPatApp&Int 1968); and Ex parte Pulvari, 157 USPQ 169 (BdPatApp&Int 1968)

Applicants respectfully traverse these rejections on two grounds. First, Applicants note that the claims under review in the instant case are distinguishable from the limitations at issue in each of the Board decisions cited by the examiner. Importantly, each of the decisions focuses on a claim limitation that is defined in the context of one property that is demonstrably broad and vague on its face because the objected-to property is not susceptible to measurement that would permit clear definition of the meets and bounds of the claim (Ex parte Spacht, 165 USPQ 409, 410 (BdPatApp&Int 1970), (noting that the use of the term "oxidation" in an inconsistent, potentially inaccurate manner that makes the claim broader than the enabling disclosure and, more significantly, may include in the claim language examples that actually do not work); Ex parte Slob, 157 USPQ 172, 173 (BdPatApp&Int 1968) (noting that a compound "being compatible with the ingredients in the powdered detergent composition" as being indisputably vague and overbroad because the claim would appear "to read upon materials that could not possibly be used with a powdered detergent composition to accomplish the purposes intended."); and Ex parte Pulvari, 157 USPQ 169, 171 (BdPatApp&Int 1968) (noting that while the claim at issue was properly rejected because the claim was directed merely to a desired result, other claims having limitations directed to a new combination of substances with only one element or constituent of that combination being expressed as a result were deemed definite).

In the instant application, claims are definite because they recite the limitations (i.e., "surfactant" of claims 23, 41, 46, and 50) in measurable, finite terms. The "surfactant" of claims 23, 41, 46, and 50 must be a compound having a hydrophilic-lipophilic balance from approximately 3 to 14. This limitation is definite because it is finite in character and can be ascertained through precise measurement.

Second, the Federal Circuit has held that a claim is indefinite if, when read in light of the

specification, it does not reasonably apprise those skilled in the art of the scope of the invention. Amgen Inc. v. Hoechst Marion Roussel, 314 F.3d 1313, 1342 (Fed. Cir. 2003). Likewise, if a claim, when read in light of the specification, reasonably apprises those skilled in the art of the scope of the invention, it is definite within the meaning of 35 U.S.C. § 112(¶ 2). SmithKline Beecham Corp. v. Apotex Corp., 403 F.3d 1331, 1352 (Fed. Cir. 2005). Applicants maintain that one of ordinary skill in the art would understand the meets and bounds of claims 23, 41, 46, and 50 by reviewing the specification that describes the limitations. Thus, one of ordinary skill in the art would understand the "surfactant" of claims 23, 41, 46, and 50 to be compounds that are commercially available (e.g., polyether siloxane) that have a hydrophilic-lipophilic balance from approximately 3 to 14 (see Applicants' specification at paragraph [0130]).

Applicants respectfully request withdrawal of rejection of claims 23, 41, 46, and 50 under 35 U.S.C. § 112, second paragraph as being indefinite in view of these remarks.

(i) "fabric 1"

The examiner has rejected claim 35 under 35 U.S.C. § 112, second paragraph as being indefinite because the examiner states that there is insufficient antecedent basis for "fabric 1" in the claim. Applicants acknowledge that "fabric 1" is a typographical error, which has been corrected through appropriate amendment of the claim. Applicants respectfully request that the claim rejection be withdrawn in view of the amendment.

(j) "method of claim 26"

The examiner has rejected claim 23 under 35 U.S.C. § 112, second paragraph as being indefinite because the claim recites the limitation "the method of claim 26," and the examiner stated that there is insufficient antecedent basis for claim 26 in the claim. Applicants acknowledge that "method of claim 26" is a typographical error, which has been corrected through appropriate amendment of the claim to recite "method of claim 22." Applicants respectfully request that the claim rejection be withdrawn in view of the amendment.

Claim Rejections under 35 USC § 102 (Anticipation)

The examiner has rejected claims 1, 2, 4, 35, 36, and 39 under 35 U.S.C. § 102(b) as being anticipated by Estes et al. (U.S. Patent No. 6,045,588). In particular, the examiner asserted that Estes et al. anticipates limitation of claim 1 drawn to "a working fluid being selected from

the commercial group of non-spark generating materials" by noting that support for the instant application paragraph [0129] lines 2-5 is also found in Estes et al. at col. 3, lines 18-20. Further, the examiner asserted that Estes et al. anticipates limitation of claims 1 and 35 drawn to a "washing adjuvant" by noting that Estes et al. discloses that washing additives may be chosen from surfactants, enzymes, bleaches, deodorizers, fragrances, anti-static agents and anti-stain agents (col. 3, lines 27-31).

Applicants respectfully traverse these rejections based upon Estes et al. An anticipatory reference under 35 U.S.C. § 102 must disclose, either expressly or inherently, each and every limitation set forth in the claim at issue. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The examiner bears the burden of establishing a prima facie case of anticipation. In re King, 801 F.2d 1324, 1327 (CCPA 1986); In re Wilder, 429 F.2d 447, 450 (CCPA 1970). If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to a grant of the patent. In re Grabiak, 769 F.2d 729, 733 (Fed. Cir. 1985). Only if that burden is met, does the burden of going forward shift to the applicant. In re King, 801 F.2d at 1327; In re Wilder, 429 F.2d at 450. Once a prima facie case is established and rebuttal evidence is submitted, the ultimate question becomes whether, based upon the totality of the record, the examiner carried his burden of proof by a preponderance of the evidence. In re Oeticker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Applicants note that claim 1, as well as claims 2 and 4 that depend from claim 1, recite more than simply a "washing adjuvant." These claims recite that the washing adjuvant be selected from a group of non-spark generating materials. The examiner's identification that Estes et al. teaches "washing additives" does not satisfy the burden that the disclosure of Estes et al. also meets the limitation that the washing adjuvant be selected from a group of non-spark generating materials. Because the examiner has failed to particularly point out how the Estes et al. reference teaches or suggests the limitation the "washing adjuvant being selected from a group of non-spark generating materials," the examiner has failed to establish that Estes et al. discloses or suggests every material limitation of claims 1, 2, and 4. Applicants maintain that the instant rejection of claims 1, 2, and 4 cannot be sustained at the present time and hereby respectfully requests withdrawal of the claim rejections under 35 U.S.C. § 102(b) as being anticipated by Estes et al.

With respect to claims 35, 36, and 39, Applicants have amended the claims to omit recital of specific compounds from the Markush group limitation drawn to washing adjuvant. In view of the claim amendments, Applicants respectfully request withdrawal of the rejection of claims 35, 36, and 39 under 35 U.S.C. § 102(b) as being anticipated by Estes et al.

Double Patenting

The examiner has provisionally rejected the claims in view of co-pending U.S. Patent Application Serial Nos. 10/957,486, 10/699,159, 10/027,431, 09/520,653, 10/698,920, 10/699,262, and 10/957,487. Applicants respectfully submit the following remarks with regard to these provisional claim rejections.

(a) U.S. Patent Application Serial Nos. 09/520,653 and 10/027,431

Applicants respectfully traverse the provisional claim rejections with regard to U.S. Patent Application Serial Nos. 09/520,653 and 10/027,431. Applicants note that U.S. Patent Application Serial Nos. 09/520,653 and 10/027,431 have issued as U.S. Patent Nos. 6,451,066 and 6,591,638, respectively.

Applicants argue that none of the claims now pending in the instant application contains subject matter that overlaps with all the material limitations of the allowed claims of the resultant prior patents. In particular, the examiner has asserted that claims 1 and 4 of the instant application share overlapping subject material with the claims U.S. Patent Application Serial No. 09/520,653, now U.S. Patent No. 6,451,066. This patent contains one independent claim and six dependent claims.

Claim 1 of U.S. Patent No. 6,451,066 recites:

> 1. A method for laundering a fabric load comprising the steps of:
> disposing a fabric load in an interior chamber of a wash container;
>
> pressurizing the chamber to an elevated pressure of greater than 1 atm;
>
> delivering a wash liquor to the fabric load in the pressurized chamber in the form of a mist, said wash liquor comprising a substantially non-reactive, non-aqueous, non-oleophilic, apolar working fluid and at least one washing additive;
>
> applying mechanical energy to provide relative movement between said fabric load and said mist for a time sufficient to provide fabric cleaning;
>
> decreasing the pressure in the chamber to volatize said wash liquor; and

removing the volatilized wash liquor from the chamber and fabric load, with proviso that said working fluid is not carbon dioxide.

Claim 1 of U.S. Patent No. 6,451,066 requires the material limitations "pressurizing the chamber to an elevated pressure of greater than 1 atm" and "decreasing the pressure in the chamber to volatize said wash liquor." Applicants note that claims 1 and 4 of the instant application do not contain these limitations drawn to changing the pressure of a chamber. Applicants argue that claims 1 and 4 are patentably distinct from the claims 1-7 of U.S. Patent No. 6,451,066.

In a similar fashion, the examiner has asserted that claims 1 and 4 of the instant application share overlapping subject material with the claims U.S. Patent Application Serial No. 10/027,431, now U.S. Patent No. 6,591,638. This patent contains two independent claims and sixteen dependent claims.

Claim 1 of U.S. Patent No. 6,591,638 recites:

1. An automatic washing apparatus to dry launder a fabric load, the apparatus comprising:

(a) a sealed wash chamber;

(b) means for pressurizing the wash chamber to pressures greater than 1 atm;

(c) means for dispensing a wash liquor into the wash chamber;

(d) means for agitating the fabric load in the wash chamber, to provide for flexure of the fabrics in the fabric load;

(e) means for substantially removing the wash liquor from the wash chamber; and

(f) means for reducing the pressure in the wash chamber to a pressure equal to or less than 1 atm.

Claim 17 of U.S. Patent No. 6,591,638 recites:

17. An automatic washing apparatus to dry launder a fabric load, the apparatus comprising:

(a) a sealed wash chamber having a rotatable wash basket having at least one perforation;

(b) means for pressurizing the wash chamber to pressures greater than 1 atm;

(c) means for dispensing a wash liquor into the wash chamber;

(d) means for agitating the fabric load in the wash chamber, to provide for flexure of the fabrics in the fabric load;

(e) means for substantially removing the wash liquor from the wash chamber wherein the wash liquor is removed via a fluid path through the wash basket perforation; and

(f) means for reducing the pressure in the wash chamber to a pressure equal to or less than 1 atm.

All claims of U.S. Patent No. 6,591,638 are directed to an apparatus whereas the claims of the instant application are directed to methods. In accordance with the Office's Restriction practice, these inventions are patentably distinct on their face because the claims are drawn to statutorily distinct inventions (machines and processes; see 35 U.S.C. § 101). Furthermore, claims 1 and 17 recite a means of changing the pressure in a chamber, which contemplates a method of using the apparatus that includes a step of changing the pressure inside a chamber. As stated above, none of the pending claims of the instant application includes material limitations drawn to changing the pressure inside a chamber.

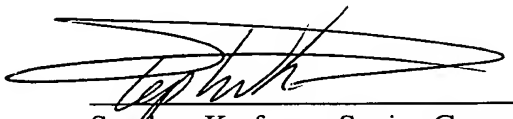
Applicants respectfully request the withdrawal of rejection of claims 1 and 4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in view of U.S. Patent Application Serial Nos. 09/520,653 and 10/027,431, now U.S. Patent Nos. 6,451,066 and 6,591,638, respectively.

(b) U.S. Patent Application Serial Nos. 10/957,486, 10/699,159, 10/698,920, 10/699,262, and 10/957,487

Applicants respectfully traverse the provisional claim rejections with regard to these patent applications by providing a timely-filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) because the above-identified conflicting applications are commonly owned with this application. Applicants respectfully request withdrawal of the claim rejections provisionally made under the judicially created doctrine of obviousness-type double patenting.

Applicants maintain that the claims of the present application are in condition for allowance. Early notification of such allowance is earnestly solicited.

Respectfully submitted,



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